IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.30072 of 2004

A.Arasu ... Petitioner

Vs.

1.The Govt of Tamilnadu
rep.by its Special Secretary to Govt.
Co.op., Food & consumer protection
Department, Fort.St.George,
Chennai- 600 009.

2. The Registrar of Co.op. Societies,
Kilpauk, Chennai - 600 010. .. Respondents

* * *

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

* * *

For petitioner : Mr.A.Amalraj
For respondents : Mr.C.Thirumaran, G.A.

* * *

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents especially the first respondent made in G.O.(D) No.271 Co.operation, Food and Consumer Protection Department, dated 16.12.2002, and quash the same as null and void, illegal and invalid and consequently direct the respondents, to include the petitioner's name in the second respondent's panel Na.Ka - 54404/96 Pa.Tho-1, dated 26.03.1998, in between S.No.6617 S.Seshagiri and S.No.6625 V.Manoharan promoting him as Co-operative Senior Inspector with effect from 01.05.1995 with all service and monetary benefits.

2.Heard the learned counsel for the petitioner as well as for the respondents.

3.The brief facts of the case, as stated by the petitioner, are as follows:-

The petitioner had joined in service as Junior Inspector of Co-operative Societies in the month of December,1985, and the appointment had

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been made by the Deputy Registrar of Co-operative Societies, Ooty Circle, appointing the petitioner on a temporary basis. The petitioner had been permitted to appear for the qualifying examination conducted by the Tamil Nadu Public Service Commission and on 16.10.1989, he was declared as passed. On 09.10.1990, he was ousted from service for want of vacancy and during the month of April, 1992, he was reinstated in service as Junior Inspector in a permanent vacancy . Based on the passing of the special qualifying examination, the petitioner was regularized in service. The Deputy Registrar of Co-operative Societies, Ooty, pursuant to the proceedings made in Na.Ka. 4888/95 Ne.Va, dated 21.06.1995, issued a charge memo alleging that the petitioner had not attended the monthly inspection meeting and had not forwarded the administrative proceedings on the due dates and that he had not paid Rs.500/- towards the outstanding advance due. Though the charge memo had not mentioned the period during which the irregularity, as alleged, had been committed, the petitioner had given a detailed explanation stating that he had not committed such irregularities. However, the Deputy Registrar of Co-operative Societies, without giving an opportunity of hearing to the petitioner, had issued proceedings Na.Ka.6107/1995 Pa-Tho, dated 31.01.1996, awarding a punishment of stoppage of increment for a period of one year without cumulative effect.

4. It has been further stated that as per Rule 7 and 11 of the Special Rules for Tamil Nadu Co-operative Sub-ordinate Service, if the Junior Inspectors of Co-operative Societies fail to pass the departmental tests in four subjects, viz., Co-operation, Auditing, Banking Book Keeping and Office Manual Test, within a period of three years from the date of promotion as Senior Inspectors of Co-operative Societies, their subsequent increments shall be withheld till they qualify in those tests. G.O.Ms.No.626 Finance (CA), dated 16.07.1995, was issued exempting permanently all the Junior Co-operative Auditors selected through the special qualifying examination conducted by the Tamil Nadu Public Service Commission from passing the account test for subordinate officers part-I and from the District Officer Manual Test, for a period of three years from the date of promotion as Senior Co-operative Auditors. The government had issued a letter No.23175/CL2/95-1, dated 01.08.1995, extending the said relaxation given to Co-operative Auditors in so far as 19 Junior Inspectors were concerned and thereafter, the government in exercise of its powers conferred under Rule 48 of the General Rules for Tamil Nadu State and Subordinate Service extended the benefits of relaxation to all Junior Inspectors of Co-operative Societies selected through the special qualifying examination who have not passed department tests and office manual tests pursuant to G.O.Ms.No.70, Co-operation, Food and Consumer Protection Department, dated 18.03.1996.

5.It is the case of the petitioner that according to his seniority, he should have been included in the panel published by the second respondent pursuant to his proceedings R.C.61422/95/EMI, dated 08.08.1995. The petitioner's name had not been included in the said list for the reason that he had not passed the departmental tests. However, the said panel,

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dated 08.08.1995, was reviewed as per the review panel, dated 26.03.1998, published by the second respondent in his proceedings Na.Ka.54404/96, Tho.1 including 150 Junior Inspectors qualified pursuant to G.O.Ms.No. 70, Co-operation, Food and Consumer Protection Department, dated 18.03.1996. Another panel, dated 31.08.1998, was published approving 65 Junior Inspectors fit for promotion as Senior Inspectors as on 01.05.1997. Even in the said list, the petitioner had not been included. Therefore, the petitioner had made several representations to the second respondent and had also preferred an appeal before the first respondent who he had issued the impugned order pursuant to G.O. (D) No.271, dated 16.12.2002, rejecting the appeal.

6. Eventhough, according to the first respondent, the petitioner was not qualified on the crucial date i.e.01.05.1995, as per G.O.Ms.No.70, dated 18.03.1996, the petitioner had become qualified, retrospectively. However, the petitioner's name had not been considered due to the currency of the punishment of stoppage of increment for one year without cumulative effect which was imposed on 31.01.1996 and the said punishment was in currency for the periods from 01.10.1996 to 30.09.1997. Therefore, the petitioner's name was not considered on the crucial date of 01.05.1997.

7. The petitioner had submitted that there was no punishment in currency on the crucial date of 01.05.1995 and not even the charges had been framed on that date. Further, on the date of the revised panel ie.26.03.1998 there was no currency of punishment since the currency of the punishment was only from 01.10.1996 till 30.09.1997. However, the respondents had stated that on the date of the revised panel ie.26.03.1998, the said period was in existence. i.e. period of one year following the period for which the punishment has been imposed. In paragraph 4 of G.O.Ms.No.70, Food and Consumer Protection Department, dated 18.03.1996, it is stated that the government have examined the proposal of the Registrar of Co-operative Societies in detail and have decided to accept it. Accordingly, in exercise of the powers conferred under rule 48 of the General Rules for Tamil Nadu State and Subordinate Service, the Governor of Tamil Nadu had extended the relaxation given to the Junior Inspectors of Co-operative Societies, who are covered by the Government order, G.O.Ms.No.116, Co-operation, Food and Consumer Protection Department, dated 17.05.1995, to all the Junior Inspectors of Co-operative Societies selected through Special Qualifying Examination who have not passed the Departmental Tests and District Office Manual test subject to the condition that they should pass these tests within a period of 3 years from the date of promotion as Senior Inspectors of Co-operative Societies failing which their subsequent increments shall be withheld till they qualify in these tests.

8. In the impugned order made in G.O.(D).No. 271, Co-operation, Food and Consumer Protection Department, dated 16.12.2002, it has been stated that the petitioner could not be considered for being enlisted in the panel for promotion and was not added in the list on 1.5.95 since he was not

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qualified at that point of time. However, when a revised panel was prepared, he could not be considered for promotion, on 01.05.1997, in the revised panel since the punishment was in currency from 01.10.1996 till 30.9.1997. Thereafter, the petitioner's name could not be included in the revised panel, dated 26.03.1998, since it fell during the check period.

9. The learned Government Advocate appearing on behalf of the respondents points out that by a governement letter No.25165/S/98-1 Personnel and Administrative Reforms Department, dated 10.06.1998, the following guidelines have been issued:-

> "The punishment of censure has no currency. Whenever an officer is undergoing any punishment, other than censure, on the crucial date or on the date of consideration, then irrespective of the time of occurrence of the irregularity, his name should be passed over for that panel. If the currency of punishment continues at the time of subsequent consideration for the next panel(s), he should still be passed over on the grounds that an officer should not be considered for promotion or promoted during the currency of any punishment. After the completion of its currency, no punishment should be held, once again, against an official even it falls within the check period of any panel, it if has already been held against the official on any earlier occasion."

According to the above guidelines, the name of the petitioner was passed over in the review panel in view of the currency of punishment of stoppage of increment for one year without cumulative effect, awarded by the Deputy Registrar, Udagamandalam, in proceedings RC.6107/95 EM dated 31.01.1996. The relaxation granted to the Junior Inspectors selected through special qualifying examination in G.O.Ms.No.70, Co-operation, Food and Consumer Protection Department , dated 18.03.1996, for passing the departmental tests is applicable to the panel as on 01.05.1995 only. Moreover, the punishment of stoppage of increment for one year without cumulative effect awarded by the Deputy Registrar, Udagamandalam on 31.01.1996 was in currency on the crucial date of the panel as on 01.05.1997. In view of this, the name of the petitioner was not included in the panel as on 01.05.1997. He has preferred an appeal with the Registrar against the non-inclusion of his name in the above said panel and it was rejected by the Registrar in proceedings Rc.187850/98 EM.1, dated 26.12.2000. Subsequently, he has also preferred an appeal with the government, for non-inclusion of his name in the panels as on 01.05.1995 and 01.05.1997. The above said appeal was rejected by the Government in G.O.(D).No.271, Co-operation, Food and Consumer Protection Department, dated 16.01.2002. Hence, it is submitted on behalf of the respondents that there is no discrimination or denial of benefits to the petitioner as alleged. It has been further stated that since the revised panel, dated 26.03.1998, had been prepared during the check period as mentioned in the

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above said letter the name of the petitioner could not be considered to be included in the revised panel. However, it is seen from the facts of the case that the currency of the punishment imposed on the petitioner was from 01.10.1996 till 30.09.1997 and the check period was for a period of one year thereafter. The above mentioned letter is dated 10.06.1998, wherein it has been mentioned that the officer concerned should not be considered for promotion during the check period. It is seen that the revised panel had been prepared on 26.03.1998 and the letter mentioned above is, dated 10.06.1998, which is after the revised panel had been prepared. In such circumstances, the learned Government pleader appearing on behalf of the respondents is not in a position to show that the petitioner would stand disqualified as on 26.03.1998.

10.On the other hand, the learned counsel appearing on behalf of the petitioner had contended that the promotion committee should have considered the nature of the alleged irregularity since it was only under Rule 17(a) of the Tamil Nadu State Sub-ordinate Service and Appeal Rules. The issue of check period would apply only for irregularities coming under Rule 17(b) of the Rules. Since the charge was not serious in nature the petitioner was not even given an opportunity of hearing and no enquiry had been conducted. The petitioner was asked to give only an explanation and thereafter, the punishment of stoppage of increment for one year, without cumulative effect, was imposed. In fact, the relevant date for which the petitioner ought to have been considered is 01.05.1995 on which date there was no show cause notice or charge against the petitioner. In fact, the show cause notice has been issued only on 21.06.1995. In such circumstances, the petitioner ought to have been included in the panel for promotion as Senior Inspector of Co-operative Societies.

11.The learned counsel appearing on behalf of the petitioner has relied on the decision of the Supreme Court in C.O.Arumugam and Others Vs The State of Tamil Nadu and Others, reported in 1990(1) Services Law Reporter, wherein it is stated as follows :-

> " 5. As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Arts. 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.
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8. Thiru L.V.Srinivasan, respondent 4, was not included in the panel for promotion since there were disciplinary proceedings then pending against him. But when the panel was prepared and approved, there was no charge framed against him. It is , therefore, not proper to have overlooked his case for promotion. We therefore, direct that his case be considered for promotion on the date on which his junior was promoted and if he is found suitable he must also be promoted with all consequential benefits."

12. The learned counsel for the petitioner had also pointed out that this Court in the Secretary to Government, Home (Transport-I) Department, Fort.St.George, Chennai-9 and another Vs K.Kolappapillai and another, reported in 2002 (2) CTC 134, relied on a letter, dated 28.06.96, wherein the government
had taken a stand, by way of a policy decision that punishments, if awarded within five years of the crucial date, would be ignored in case the incidents on the basis of which those punishments had taken place were more than five years old. In such view of the matter, the petitioner ought to have been considered for promotion as on 01.07.1995.

13.On hearing the rival contentions and on a perusal of the records placed before this Court, it is seen that the contentions raised on behalf of the petitioner are tenable. Considering the charges leveled against him the petitioner ought to have been considered for promotion as a Senior Inspector of Co-operative Societies, along with the other similarly placed persons, as on 01.05.1995. Therefore, the respondents are directed to consider the claims of the petitioner for promotion as a Senior Inspector of Co-operative Societies as on the crucial date of 01.05.1995, with the attendant benefits, and pass appropriate orders, within a period of six weeks from the date of receipt of a copy of this order. No costs.

ssm

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To
The Special Secretary to Government,
The Govt of Tamilnadu,
Co.operation, Food & consumer protection
Department, Fort.St.George,
Chennai- 600 009.
2. The Registrar of Co.op. Societies,
Kilpauk, Chennai - 600 010.

Pre-delivery order in
W.P. No.30072 of 2004
29.01.2007

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